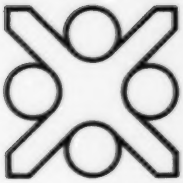

Sixth Annual Report

of

Prince Edward Island

Human Rights Commission

1982

The Honourable George R. McMahon
Minister Responsible for Human Rights
Province of Prince Edward Island

Sir:

We are privileged to submit to you, the Minister Responsible for Human Rights within the Province of Prince Edward Island, the Sixth Annual Report of the Prince Edward Island Human Rights Commission for the calendar year ending December 31, 1982.

Respectfully submitted,

Allan F. MacDonald
Chairperson

CHAIRPERSON'S REMARKS

We are pleased to present the annual report of the P. E. I. Human Rights Commission for the calendar year 1982.

This report is an account of the Commission's functions and activities during the year. The Commission takes satisfaction in the fact that it has been able to meet the demands of both an increased case load and the many requests for services and information. This has been achieved through the able and dedicated service of our executive director and our administrative officer. To both, the Commissioners express their appreciation and thanks.

A special reference should be made here to two initiatives undertaken by the Commission during the year: (1) the recognition of alcoholism as a form of physical disability; and (2) the promotion of research into human rights legislation and services. Already the Commission has considered complaints of discrimination against alcoholics; and it has been encouraged by the positive reception accorded its statement defining this area of human rights. The findings of the sociological study into citizens' perceptions of human rights legislation and services constitute a major contribution to the Commission's work of fostering education in human rights in the Province. The advancement of public respect for persons and their rights must remain a central task of this Commission; indeed it is the keystone to the present and future success of our work.

THE P. E. I. HUMAN RIGHTS ACT

The P. E. I. Human Rights Act was assented to on December 12, 1975, and became the paramount law of the Province three years from the date the Act came into force. Initially the Act covered discrimination in employment and access to services, accommodations and facilities because of race, religion, creed, colour, sex, marital status, ethnic or national origin and political belief. Discrimination because of age (18-65) and physical disability applied only to areas relating to employment. The Act was first amended by the Provincial Legislature on April 8, 1980, to include discrimination based on age and physical disability in access to services, facilities and accommodations. In 1982 the Act was amended for the second time to allow for an "in camera" inquiry where the Minister has determined that the holding of a public inquiry would not serve the public interest. Discrimination in pay has been prohibited since the Act's inception. Employers must give equal pay for equal work. The P. E. I. Human Rights Act is the only Act in Canada which not only prohibits discrimination in pay between males and females but between members of the same sex who are doing essentially the same work.

THE HUMAN RIGHTS COMMISSION

The P. E. I. Human Rights Commission, as mandated by the P. E. I. Human Rights Act, is composed of three Commissioners. These Commissioners are appointed for a three-year term by the Lieutenant-Governor-in-Council. The terms of the three Commissioners are staggered so that the term of only one Commissioner expires in any given year. This year Kenneth Birtwistle was reappointed for a second three-year term. During 1982 the Commission

was comprised of the following members:

Allan F. MacDonald, Chairperson, appointed September 18, 1980

Kenneth Birtwistle, reappointed July 1, 1982

Ruth MacLeod, appointed December 2, 1981

The administrative staff, working under the supervision and direction of the Commission, comprised the following individuals:

Thomas W. Klewin, part-time Executive Director

Sherry Finley, full-time Administrative Officer

The Commissioners

Allan F. MacDonald, Ph.D., Chairperson, Glenfinnan

Father MacDonald is a sociology professor at the University of P. E. I. Prior to his doctoral degree at the Catholic University of America, he studied at St. Dunstan's, St. Augustine's Seminary, and the University of Toronto. As Director of Extension at St. Dunstan's, he initiated programs in labour relations, social action, and community development. During the decade 1965-75 he was involved in the formation and direction of the P. E. I. Rural Development Council, later serving as chairman. He is the official P. E. I. representative on the Continuing Committee of Federal-Provincial Officials Responsible for Human Rights.

Kenneth Birtwistle, Commissioner, Charlottetown

Kenneth Birtwistle is currently serving as a director of the Canadian Foundation for Polio and as a member of the Naval Benevolent Fund. In addition, he is a member of Rotary, the United Services Officers' Club and the Royal Canadian Legion. He held the position of Executive Director of the P. E. I. United Way for a period of ten years. His position with the United Way brought him into close working cooperation with a wide variety of agencies, including many whose members have a

special involvement with the protection offered them in the P. E. I. Human Rights Act. He served in the Canadian Navy from the onset of World War II until 1962, retiring with the rank of Commander. In addition to sea appointments he served in Ottawa as Deputy Director Naval Intelligence, and as Deputy Director Naval Organization, as well as on the NATO staff in Norfolk, Virginia.

Ruth MacLeod, Commissioner, Montague

Ruth MacLeod is currently the Secretary of the Board of Directors of the Montague Housing Authority and Secretary-Treasurer of the Montague Christian Church. In 1960 she was appointed Secretary of Montague Regional High School Unit and in 1972, when the larger Units of School Administration were formed, she was appointed Superintendent of Business Affairs for Regional Administrative Unit Four and continued in that position until retirement in November, 1979. She has been an active member of the Kings County Hospital Ladies' Auxiliary, is a Past President of the Montague Home & School Association and the Provincial Women's Progressive Conservative Association. She has also been active in various community projects such as Community School and a Community Choir.

THE ROLE OF THE COMMISSION

Unlike most other provincial Commissions, the P. E. I. Commissioners are directly involved in the investigation and settlement of complaints as well as in other aspects of the operation of the Commission which normally are the function of most Human Rights Commission staffs. Since the Commission's staff, resources, and the man-hours available for the staff are limited, the P. E. I. Commissioners must assume a larger function and role in the operational activities of the Commission.

During 1982 the Commission held 18 meetings and conducted 13 settlement meetings with complainants and respondents. The Commissioners were also responsible for reviewing any requests for exemptions based on "bona fide" qualifications. During 1982 the Commission authorized two exemptions, denied one request for an exemption and suggested changes in one to bring it into conformity with the Act.

Policy decisions were also formulated and major issues discussed and reviewed at Commission meetings. During the past year the Commission dealt with the following major issues, policies, and procedures:

(1) The Condition of Alcoholism as it relates to physical disability under the Human Rights Act. The Commission established a Canadian precedent in accepting this type of complaint in relation to employment and access to insurance. The Commission accepted three complaints in this category and in the process issued a policy statement as a protected disability under the Act.

(2) Proposed two amendments to the Human Rights Act which would clarify the Commission's role in Boards of Inquiry.

(3) Reviewed and critiqued C.E.I.C.'s Summer Canada Student Employment Programme. The Commission expressed strong reservations concerning the hiring preferences given to women, native people and those with a physical disability since the program does not attempt to redress any long-term employment disadvantages these groups have experienced in the past.

(4) Reviewed the proposed guidelines of the Minimum Wage Order of the Labour Act which permitted an employer to pay a disabled individual less than the minimum wage. The Commission found the revised guidelines acceptable in that only those disabled individuals unable to perform at minimum standards will be paid less than the minimum wage, thus allowing sheltered workshops to continue to function.

(5) Sponsored a summer student "Human Rights Awareness Project". The project researched the public's perception of their legal rights under human rights legislation and the Charter of Rights. The results will be used in the development of public legal education programs to address the problem areas uncovered by the project.

(6) Reviewed the Commission's role in Boards of Inquiry as well as the nature and conduct of a Board of Inquiry. This was a continuing review during the last seven months of 1982.

FORMAL, SIGNED COMPLAINTS

During 1982 the Commission dealt with 30 formal complaints; 8 were carried over from 1981, 3, including the Charles Craig complaint, had been referred to the Minister in 1980. Two of these were awaiting the decision in the Charles Craig Board of Inquiry which was begun but not completed in 1982. The Commission dealt with three new areas in 1982: ethnic origin and access to accommodations; alcoholism and employment; and alcoholism and access to a service (insurance).

Table I Disposition of formal, signed complaints

	Settled by Commission	Referred to Minister	Withdrawn by Complainant	Carried to 1983	Total
Equal Pay.....				1	1
Race, Colour.....	1				1
Physical Disability..	5			3	8
Sexual Harassment....	2		1	2	5
Marital Status.....	1			1	2
Political Belief.....	1	3(in 1980)		2	6
Sex.....	3			3	6
Ethnic Origin.....				1	1
TOTAL.....	13	3	1	13	30

Table II Categories of formal, signed complaints

	Employment	Services	Access to Facilities	Access to Accommodations	Total
Equal Pay.....	1				1
Race, Colour.....		1			1
Physical Disability..	6	2			8
Sexual Harassment....	5				5
Marital Status.....	1		1		2
Political Belief.....	6				6
Sex.....	5	1			6
Ethnic Origin				1	1
TOTAL.....	24	4	1	1	30

SETTLEMENTS

The following are a few examples of settlements achieved by the Commission during 1982 and illustrate types of complaints received by the Commission.

Employment/Sexual Harassment

A female filed a complaint against her employer who, she alleged, had fired her because she refused to accept his proposition. The Commission investigated and found that the statements of the complainant were more credible than those of her employer. The Commission therefore concluded that the preponderance of evidence would indicate that the employee had been sexually harassed. The settlement included a letter of apology and the wages lost between the time she was fired and her temporary job was to terminate.

A female who quit her job alleged that she quit because her employer continued to sexually harass her after she had indicated she objected to the harassment. The Commission found that this constituted "constructive dismissal", indicating it was the same as if she had been fired. The settlement included compensation for general damages related to the humiliation and mental anguish suffered by the complainant and lost wages. In addition, the complainant was furnished with a letter of reference attesting to her satisfactory work performance.

Employment/Physical Disability

A female filed a complaint against her employer, alleging that the terms and conditions of her employment had been changed because she was an epileptic. Her employer had required her to wear protective gear which no other worker was required to wear because the

company believed she might be more susceptible to injury because of her physical disability. The Commission found little relationship between these requirements and the nature of the employee's disability. The Commission noted that a physical disability does not automatically infer that an employee with a disability is a greater risk to himself or the employer. The settlement included a requirement to wear only one additional protective item which was directly related to the nature of the physical disability.

Services (Education)/Colour

A male,denied the opportunity to be accepted in a career-oriented educational program, alleged he was discriminated against because of colour. Terms of settlement were that the complainant was to be accepted into a future class if he could meet all the minimum standards for the class.

Employment/Physical Disability (the condition of alcoholism)

A male, fired from his job because he entered the Addiction Services Treatment Centre, complained that he had been discriminated against because of a physical disability, alcoholism. The Commission accepted the complaint under the same conditions it accepts all complaints filed under physical disability, namely, that the physical disability does not affect the job the individual is performing. The Commission found that the frequency of admissions to the Centre had affected the employee's work performance. The employer had a legal right, consequently, to terminate the individual's employment.

COMPLAINTS REFERRED TO THE CANADIAN HUMAN RIGHTS COMMISSION

The P. E. I. Human Rights Commission referred 17 individuals to the Canadian Human Rights Commission for filing a formal complaint with that Commission. Preliminary investigation of the individuals' complaints revealed that the alleged discriminations fell within federal rather than provincial jurisdiction. The Commission assisted these individuals by establishing initial contact with the Canadian Human Rights Commission's regional office in Halifax, Nova Scotia. The majority of the referrals were related to Canada Manpower, unemployment insurance, and equal access to credit from banks.

MISCELLANEOUS COMPLAINTS

32 inquiries were received by the Commission which might have led to the filing of a formal complaint. These did not reach the formal complaint stage, however, because the individuals did not choose to pursue the inquiries further, or because a resolution was achieved without the necessity of an investigation of a formal complaint. Frequently an explanation of the Act to both parties was sufficient to effect a settlement to the satisfaction of all concerned.

INFORMAL COMPLAINTS AND INQUIRIES

During 1982 the Human Rights Commission handled 169 informal complaints and inquiries that did not fall within the ten prohibited discriminatory categories listed in the Human Rights Act. While none of these inquiries or complaints could be investigated under the Act, the Commission did attempt to assist these individuals in finding the proper government department or agency to further pursue their problems. These types of cases are time consuming, but the Commission believes providing informational assistance to these individuals lies within the spirit of the Act even if the complaint

itself does not fall within the parameters of the Act.

The most frequent inquiries related to the demand for an individual's S.I.N. for a wide variety of purposes and reasons. Those calling indicated they believe the use of the S.I.N. to compile a file on an individual is an invasion of their privacy. In addition, the Commission received numerous inquiries and complaints relating to the Charter of Rights, the Workers' Compensation Board, access to accommodations, especially rental facilities, and what the individual believed were a violation of his/her employment rights.

MONITORING OF PRE-EMPLOYMENT APPLICATION FORMS

During 1982 the Commission monitored 10 pre-employment application forms as well as assisting four companies in their preparation of new forms.

A major task still confronting this Commission is the monitoring of pre-employment application forms used in Prince Edward Island by businesses and industries. The Commission has received some assistance in this area by concerned individuals who have been asked to complete employment application forms which are discriminatory and who have notified the Commission of the discriminatory employment application forms.

CONTACTS WITH OTHER HUMAN RIGHTS COMMISSIONS, GOVERNMENT MINISTERS, DEPARTMENTS AND AGENCIES, FEDERAL AND PROVINCIAL

During 1982 the Commission had numerous contacts with other Human Rights Commissions, government departments and agencies both at the federal and provincial levels. These involved correspondence, phone conversations and personal conferences with the above mentioned groups in relation to queries sent to the Commission or initiated by the Commission as it sought assistance in answering questions or solving problems relating to human rights. These contacts include providing answers

to government departments and agencies seeking interpretion of the Human Rights Act as it relates to their departments, agencies and other provincial Acts.

During 1982 the Commission reviewed the proposed new Civil Service Act and forwarded its findings concerning the proposed new Civil Service Act as it related to the P. E. I. Human Rights Act. The Commission also provided the provincial government with information regarding Boards of Inquiry which are convened under the Human Rights Act. In addition the Commission provided assistance in integrating Social Service policy with the Human Rights Act.

EDUCATIONAL PRESENTATIONS

During 1982 the Commission made 14 educational presentations to a wide variety of organizations and institutions. Included in the presentations was a joint seminar held with the regional Canadian Human Rights Commission covering a span of two days. The seminar was directed at government supervisory personnel and union officials. It was the first such effort by the Commission in reaching out to these two groups.

Because of its manpower constraints, the Commission began to utilize the media to a greater extent as an educational tool. Both the Commission chairperson and executive director were interviewed on radio and television on a number of occasions. In addition, news releases and news conferences were held to inform the public of settlements achieved by the Commission. A news conference, held to announce the Commission's acceptance of alcoholism as a physical disability,achieved nation-wide coverage. The Commission has determined to make greater use of news conferences to achieve the educational goals mandated by the Human Rights Act.

PROJECTED GOALS

As the Commission looks to 1983, it has begun to examine what may be required of it to make its work more effective for the people of the Province.

The first task the Commission faces is development of a policy relating to access to insurance by individuals with the physical disability of alcoholism. This Commission is the first Human Rights Commission in Canada to have received and accepted a complaint of this nature. The Commission's decision arising from its research and policy development will, consequently, be a precedent-setting one.

The Commission will also be endeavouring to maximize its educational thrust with the limited staff it possesses by increasing its use of the media and special news conferences, as well as exploring how resource groups and individuals might be utilized by the Commission to provide the public with general information on human rights and directing individuals to the Commission for specific information.

Appendix

The P. E. I. Human Rights Commission has accepted alcoholism as a form of disability protected by the P. E. I. Human Rights Act. In the Act "physical disability" is described as any degree of disability or infirmity suffered as a result of injury, illness or birth defect.[1] The Commission has defined alcoholism as a form of disability suffered as the result of an illness and placed it into the same category as such chronic diseases as asthma, diabetes and high blood pressure.

The Annals of Internal Medicine describes alcoholism as a "chronic, progressive and potentially fatal disease."[2] It is considered a chronic disease for the following reasons:

1. It is irreversible; that is, it cannot be cured; it can only be treated.

2. It is a potentially terminal illness. If the alcoholic does not stop drinking, he/she will more likely die at an earlier age.

3. It is progressive and will not go away if left untreated.

The Commission has based its acceptance of alcoholism as an illness on the opinions of the following authorities:

1. The P. E. I. Addiction Services.
2. The P. E. I. Hospital and Health Services Commission.
3. The Canadian Employment and Immigration Department.
4. The Canadian Medical Association.
5. The Canadian Psychiatric Association.
6. The American Medical Association.

1. An Act to Amend the Human Rights Act (assented to April 18, 1980)
2. Annals of Internal Medicine, December 1976

7. The World Health Organization.

8. The U. S. National Council on Alcoholism.

9. The U. S. Internal Revenue Service (which permits medical deductions for treatment and travel to A.A. meetings).

10. A 1980 court decision in Seattle, Washington, in which the Court ruled that alcoholism is a disease and a handicap and consequently fell under the State's anti-discrimination laws. Therefore, an inactive alcoholic was protected by these laws.

In confronting the problem of alcoholism the Human Rights Commission has found it necessary to make two distinctions:

First, it distinguishes between the condition of alcoholism and the act of drinking.

Second, for its purposes in administering the Human Rights Act, the Commission distinguishes three types of alcoholism:

a. that of the Active Alcoholic, the individual who is addicted to alcohol and whose compulsive and repetitive use of alcohol interferes in any major area of his life including that of his work;

b. that of the Inactive Alcoholic, the individual who is remaining free of alcohol dependence (the Commission considers an individual to be an inactive alcoholic when his drinking habit has been completely broken, permitting the individual's physical and mental health, skills and job performance to return to an acceptable level);

c. that of the Recovering Alcoholic, the individual who is taking or has taken treatment, is following a prescribed rehabilitation course and is continuing to have his recovery monitored by a treatment centre or A.A. Also in the "recovering

alcoholic" category, the Commission would include the person seeking authorized absence from work for recognized medical treatment. Such a person is entitled to receive benefits and considerations similar to those granted for other illnesses in which absence from work is necessary for medical treatment or hospitalization.

Active alcoholics and individuals who either drink on the job or come to work incapacitated are not protected under the Human Rights Act. This means an employer has the right either to refuse to hire or to terminate the position of an individual if his/her drinking problem

1. adversely affects job performance and productivity;

2. causes unscheduled absences from work on a re-occurring basis or makes the individual habitually late for work;

3. adversely affects his/her own safety or the safety of co-workers and the public;

4. violates working rules or company regulations.

By placing the condition of alcoholism in the category of a disabling illness, the Commission is offering the protection of the Human Rights Act to both inactive and recovering acloholics. If an inactive alcoholic is denied a job based on his past alcohol record rather than on his job skills, training, aptitudes and experience, the Commission would accept a complaint from the individual under "physical disability."

As with other physical disabilities, the employer must attempt to make "reasonable accommodations" for a recovering alcoholic; that is, if there is a high degree of risk to the individual or others during the "recovery" period, an attempt must be made to find alternative employment until the employee clearly demonstrates he/she has become an inactive alcoholic.

In addition, the Commission is offering the protection of the Human Rights Act to those who wish to enter the P. E. I. Addiction Services Treatment Centre and become recovering alcoholics but are afraid they will lose their jobs if they do so.

The Commission has also extended the protection of the P. E. I. Human Rights Act to those inactive alcoholics who are being discriminated against in access to services, facilities and accommodations because of a past history of active alcoholism. Included in access to services is access to insurance, a service which is frequently denied an inactive alcoholic based not on his present condition but rather on a past condition.

It is the position of this Commission that the policy set forth here will contribute substantially to the elimination of acts directed against the rights of alcoholics in this Province.

P. E. I. Human Rights Commission

Allan F. MacDonald, Chairperson

Kenneth Birtwistle, Commissioner

Ruth MacLeod, Commissioner

October 20, 1982